

## **VIRGINIA:**

### **IN THE DEPARTMENT OF ENVIROMENTAL QUALITY**

**IN RE: Henry Archie**

#### **ORDER**

This cause came to be heard on May 30, 2019, in the Department of Environmental Quality's Northern Regional Office in Woodbridge, Virginia.

Pursuant to § 10.1-1186 of the Code of Virginia, the Director of the Department of Environmental Quality ("DEQ") has the authority to issue special orders that may include injunctive relief and civil penalties.

I have reviewed the Record, Exhibits, and the Presiding Officer's Recommended Findings of Fact and Conclusions of Law in the above-referenced matter. Accordingly, I adopt the attached Findings of Fact and Conclusions of Law and incorporate them into this Order.

Pursuant to my authority under Va. Code § 10.1-1186, I order Henry Archie to comply with (1) the State Water Control Law, Va. Code § 62.1-44.2 et seq., and (2) Virginia Pollutant Discharge Elimination System Permit Registration No. VAR052115 (the "Permit").

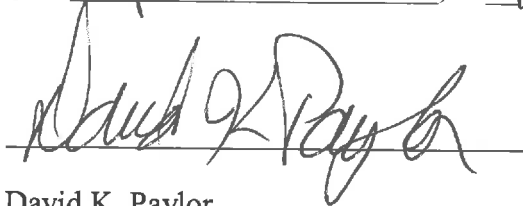
Specifically, I order Henry Archie to complete the following with respect to Penny's Used Auto Parts (the "Facility") located at 13059 Minnieville Rd in Woodbridge, Virginia:

1. Within 90 days of the effective date of this Order, submit to DEQ a Stormwater Pollution Prevention Plan ("SWPPP") for the Facility, satisfying the requirements of Part III of the Permit.
2. If DEQ provides any comments on the SWPPP, respond to DEQ's comments within 14 days of the date of the comments.
3. Within 30 days of the effective date of this Order, submit to DEQ a data analysis of the Chesapeake Bay Total Maximum Daily Load ("TMDL") data, in accordance with Permit Part I(B)(7)(b)(3)(b), based on nutrient and sediment results from the averaged Chesapeake Bay TMDL monitoring reports.
4. Within 90 days of the effective date of this Order, submit to DEQ a Chesapeake Bay TMDL Action Plan, in accordance with Permit Part I(B)(7)(b)(3)(c), if the data analysis required by paragraph 3 above indicates that the calculated Facility loading value of total phosphorus exceeds 1.5 lb/ac/yr, total nitrogen exceeds 12.3 lb/ac/yr, or total suspended solids exceeds 440 lb/ac/yr.
5. Pay a civil penalty in the total sum of **Ten Thousand Dollars (\$10,000)** within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

The duration of this Order shall be twelve months from the date that it is entered.

Enter this order this 9 day of September, 2019

A handwritten signature in black ink, appearing to read "David K. Paylor", is written over a horizontal line.

David K. Paylor  
Director, Department of Environmental Quality

**VIRGINIA:**

**IN THE DEPARTMENT OF ENVIRONMENTAL QUALITY**

**IN RE: Henry Archie**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**I. Preliminary Statement**

This case concerns whether Mr. Henry Archie violated certain provisions of the State Water Control Law, Va. Code §§ 62.1-44.2 et seq., and the Virginia Pollutant Discharge Elimination System Permit<sup>1</sup> Registration No. VAR052115 (the “Permit”) at Penny’s Used Auto Parts (the “Facility”) located at 13059 Minnieville Rd in Woodbridge, Virginia. Also at issue is whether injunctive relief and a civil penalty are warranted for the alleged violations.

On May 30, 2019, DEQ staff held a Special Order Proceeding (the “Proceeding”) in this matter pursuant to Va. Code §§ 2.2-4019 and 10.1-1186. The Proceeding took place in Woodbridge, Virginia, at the Department of Environmental Quality (“DEQ”) Northern Regional Office (“NRO”). Mr. Archie did not appear at the Proceeding in person or by counsel or other representative.

On April 10, 2019, the agency sent email notification and postal notification to Mr. Archie regarding the scheduled date for the Informal Fact Finding proceeding: May 9, 2019 at 1:00 P.M. On May 6, 2019, the agency sent an email reminder to Mr. Archie reminding him of the May 9, 2019 proceeding date. A day prior to the proceeding, Mr. Archie requested the proceeding be postponed; the agency complied with Mr. Archie’s request to postpone. A new hearing date was scheduled for May 30, 2019. On May 7, 2019, the agency provided Mr. Archie with email notification of the new proceeding date of May 30, 2019. A day prior to the scheduled May 30<sup>th</sup> proceeding date, again Mr. Archie requested that the proceeding be postponed. The Presiding Officer denied Mr. Archie’s request to postpone.

Attached are recordings of the Proceeding and the exhibits numbered as they were received. The exhibits include the DEQ Exhibit Book, containing DEQ Exhibits 1-11, as well as the April 10, 2019 Notice of Special Order Proceeding and May 9, 2019 rescheduling letter, labeled as DEQ Exh. 12. DEQ called three witnesses during the Proceeding: Edward Stuart, NRO Water Compliance Manager; Amy Dooley, NRO Water Compliance Inspector; and Benjamin Holland, NRO Enforcement Specialist. The Presiding Officer left the record for the Proceeding open until June 7, 2019 to allow Mr. Archie to submit compliance documentation.<sup>2</sup>

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<sup>1</sup> The Permit is promulgated at 9 VAC 25-151-70, et seq.

<sup>2</sup> The Presiding Officer notified Mr. Archie after the proceeding that he could submit compliance documentation on the record until June 7, 2019, but Mr. Archie did not submit any documentation.

## **II. Findings of Fact**

### **A. Jurisdiction and Venue**

1. Mr. Archie owns the Facility located at 13059 Minnieville Rd in Woodbridge, Virginia. DEQ Exh. 1; Testimony of Edward Stuart.
2. The Facility is located within the part of the Commonwealth administered by DEQ's Office (NRO). Testimony of Edward Stuart.
3. Coverage under a Virginia Pollutant Discharge Elimination System Permit is required for discharges of stormwater from industrial activities at the Facility associated with auto salvage. Testimony of Edward Stuart.
4. Mr. Archie registered for coverage under the Permit for stormwater discharges from the Facility, and DEQ issued Permit coverage to Mr. Archie on December 5, 2014. DEQ Exh. 1 and 2; Testimony of Edward Stuart.

### **B. Stormwater Pollution Prevention Plan**

#### **a. Relevant SWPPP Requirements**

5. Part III of the Permit requires a Stormwater Pollution Prevention Plan ("SWPPP") to be developed and implemented for the Facility. DEQ Exh. 2; Testimony of Edward Stuart. The SWPPP is a plan to manage discharges of stormwater from the Facility to minimize pollutants leaving the site to the maximum extent practicable. Testimony of Edward Stuart.
6. Pursuant to Permit Part III(F)(2), the permittee must retain a copy of the SWPPP at the Facility and make it immediately available to DEQ for review at the time of an on-site inspection or upon request. DEQ Exh. 2; Testimony of Edward Stuart.

#### **b. Failure to Develop a SWPPP**

7. As noted in a Warning Letter issued March 13, 2014, the Facility did not have a SWPPP at the time of DEQ inspections of the Facility on January 31, 2014 and February 26, 2014. DEQ Exh. 3; Testimony of Edward Stuart.
8. During an inspection of the Facility on July 25, 2018, neither a SWPPP nor supporting documentation was available upon the request of DEQ staff. DEQ Exh. 8; Testimony of Amy Dooley.
9. Mr. Archie has never made a SWPPP for the Facility available for DEQ review. Testimony of Edward Stuart and Amy Dooley.
10. Environmental Systems Services ("ESS") indicated to DEQ staff that they had been contracted to draft a SWPPP for the Facility in 2014. Testimony of Benjamin Holland. However, neither ESS nor Mr. Archie has ever been able to produce a SWPPP for the Facility upon DEQ's request. Testimony of Benjamin Holland. ESS stated to DEQ staff

that they had not been to the Facility since 2014 and have not received monitoring samples for analysis for the Facility in years. Testimony of Benjamin Holland.

11. According to ESS personnel, Mr. Archie again reached out to ESS in 2018 regarding development of a SWPPP. Testimony of Benjamin Holland. However, after Mr. Archie repeatedly failed to follow up with ESS, ESS did not develop a SWPPP at that point. Testimony of Benjamin Holland.
12. The totality of the circumstances indicates that there is no SWPPP for the Facility.

### **C. Discharge Monitoring Reports**

#### **a. Relevant Discharge Monitoring Requirements**

13. Permit Part I(A)(1)(b) requires benchmark monitoring of stormwater discharges from the Facility's stormwater outfalls for the presence of pollutants of concern. DEQ Exh. 2; Testimony of Edward Stuart.
14. Permit Part I(B)(7)(b)(I) requires discharge monitoring for parameters covered by the Chesapeake Bay Total Maximum Daily Load ("TMDL")—total suspended solids, total nitrogen, and total phosphorus. DEQ Exh. 2; Testimony of Edward Stuart.
15. Permit Part I(A)(2)(d)(2) requires benchmark and Chesapeake Bay TMDL discharge monitoring to be conducted semiannually for the January through June monitoring period and the July through December monitoring period. DEQ Exh. 2; Testimony of Edward Stuart.
16. Permit Part I(A)(5)(a) requires benchmark and Chesapeake Bay TMDL discharge monitoring results to be submitted semiannually to DEQ on discharge monitoring reports ("DMRs") by January 10 (for the July 1 through December 31 monitoring period) and July 10 (for the January 1 through June 30 monitoring period). DEQ Exh. 2; Testimony of Edward Stuart.

#### **b. Failure to Submit DMRs**

17. As noted in a Notice of Violation ("NOV") issued April 17, 2017, DEQ did not receive the Chesapeake Bay TMDL DMR for Outfall 001 for the July 1, 2016 through December 31, 2016 monitoring period, which was due January 10, 2017. DEQ Exh. 5; Testimony of Edward Stuart.
18. To date, Mr. Archie has failed to submit the Chesapeake Bay TMDL DMR for the July through December 2016 monitoring period. Testimony of Edward Stuart.
19. As noted in an NOV issued September 20, 2017, DEQ did not receive the benchmark monitoring DMR for Outfall 001 for the January 1, 2017 through June 30, 2017 monitoring period, which was due July 10, 2017. DEQ Exh. 6; Testimony of Edward Stuart.

20. To date, Mr. Archie has failed to submit the benchmark monitoring DMR for the January through June 2017 monitoring period. Testimony of Edward Stuart.
21. As noted in an NOV issued March 28, 2018, DEQ did not receive the benchmark monitoring DMR for Outfall 001 for the July 1, 2017 through December 31, 2017 monitoring period, which was due January 10, 2018. DEQ Exh. 7; Testimony of Edward Stuart.
22. To date, Mr. Archie has failed to submit the benchmark monitoring DMR for the July through December 2017 monitoring period. Testimony of Edward Stuart.
23. As noted in an NOV issued September 17, 2018, DEQ did not receive the benchmark monitoring DMR for Outfall 001 for the January 1, 2018 through June 30, 2018 monitoring period, which was due July 10, 2018. DEQ Exh. 9; Testimony of Amy Dooley.
24. To date, Mr. Archie has failed to submit the benchmark monitoring DMR for the January through June 2018 monitoring period. Testimony of Amy Dooley.
25. As noted in an NOV issued February 25, 2019, DEQ did not receive the benchmark monitoring DMR for Outfall 001 for the July 1, 2018 through December 31, 2018 monitoring period, which was due January 10, 2019. DEQ Exh. 10; Testimony of Amy Dooley.
26. To date, Mr. Archie has failed to submit the benchmark monitoring DMR for the July through December 2018 monitoring period. Testimony of Amy Dooley.
27. During an inspection of the Facility by DEQ staff on July 25, 2018, DMR records were not present at the Facility. Testimony of Amy Dooley.

#### **D. Chesapeake Bay TMDL Data Analysis and Action Plan**

##### **a. Relevant Data Analysis and Action Plan Requirements**

28. Permit Part I(B)(7)(b)(3)(b) requires the permittee to analyze nutrient and sediment data from the Chesapeake Bay TMDL discharge monitoring to determine if additional action is required. DEQ Exh. 2; Testimony of Edward Stuart.
29. Permit Part I(B)(7)(b)(3)(c) requires the permittee to develop and submit to DEQ a Chesapeake Bay TMDL Action Plan if the data analysis indicates that loading values for total phosphorus exceeds 1.5 lb/ac/yr, total nitrogen exceeds 12.3 lb/ac/yr, or total suspended solids exceeds 440 lb/ac/yr. DEQ Exh. 2; Testimony of Edward Stuart.

##### **b. Failure to Complete TMDL Data Analysis and Action Plan**

30. On June 14, 2016, DEQ sent Mr. Archie a reminder of the Permit requirement to conduct a data analysis of Chesapeake Bay TMDL discharge monitoring results, as well as links to step-by-step instructions for conducting the data analysis. DEQ Exh. 4; Testimony of Edward Stuart.

31. As of the date of the Proceeding, Mr. Archie had not submitted the results of the TMDL Data Analysis or a Chesapeake Bay TMDL Action Plan to DEQ. Testimony of Edward Stuart.
32. The totality of the circumstances indicates that Mr. Archie failed to conduct the data analysis of Chesapeake Bay TMDL discharge monitoring results.

#### **E. Civil Penalty Calculation**

33. Benjamin Holland explained how the penalty was calculated for Mr. Archie, using the VPDES Civil Charge/Civil Penalty Worksheet (the "Worksheet") included in DEQ's Civil Enforcement Manual. DEQ Exh. 11; Testimony of Benjamin Holland. This worksheet is used throughout the Commonwealth to calculate civil charges and civil penalties for VPDES violations. DEQ Exh. 11; Testimony of Benjamin Holland.
34. A total civil penalty of \$18,175 was calculated for Mr. Archie on the Worksheet. DEQ Exh. 11; Testimony of Benjamin Holland.
35. Four occurrences were assessed on line 1(a)(3) of the Worksheet for failing to submit the Chesapeake Bay TMDL DMR for the July-December 2016 monitoring period, and the benchmark monitoring DMRs for the January-June 2017, July-December 2017, and January-June 2018 monitoring periods.<sup>3</sup> DEQ Exh. 11; Testimony of Benjamin Holland. The potential for harm was assessed as moderate because DMRs represent baseline monitoring of discharges from the Facility, and in their absence there is a moderate potential of harm to human health and the environment. DEQ Exh. 11; Testimony of Benjamin Holland.
36. On line 1(a)(10) of the Worksheet, one occurrence was assessed for failing to have a SWPPP. DEQ Exh. 11; Testimony of Benjamin Holland. The potential for harm for this line was assessed as serious because of the long term nature of the violation, the importance of the SWPPP to the regulatory program, and its significance for pollution control.
37. The culpability was assessed as serious because Mr. Archie showed a lack of due diligence in carrying out permit requirements, and he received numerous notices of alleged violation, notifying him of the deficiencies and applicable legal requirements. DEQ Exh. 11; Testimony of Benjamin Holland.
38. On line 2, an economic benefit of \$324 was estimated for the failure to submit DMRs based on the average sample analysis cost provided by ESS (\$24 per sample for total suspended solids, and \$28 per sample for metals). DEQ Exh. 11; Testimony of Benjamin Holland.

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<sup>3</sup> Mr. Archie also failed to submit the benchmark monitoring DMR for the July through December 2018 monitoring period. Testimony of Benjamin Holland. That DMR was due on January 10, 2018, after the penalty was calculated on the worksheet included in Exhibit 11, so it is not reflected in the penalty amount. Testimony of Benjamin Holland.

39. DEQ enforcement staff provided Mr. Archie with the opportunity to file an Ability to Pay Application, but Mr. Archie did not take advantage of that opportunity. Testimony of Benjamin Holland.
40. Penalties for Mr. Archie's violations have not been addressed previously in any order or case decision. Testimony of Benjamin Holland.
41. Penalties in orders issued under Va. Code § 10.1-1186 are limited to \$10,000. Va. Code §§ 10.1-1182, 10.1-1186.
42. A civil penalty of \$10,000 is appropriate to address Mr. Archie's violations in this case.

### **III. Conclusions of Law**

1. Mr. Archie is a "person" under Va. Code § 62.1-44.3.
2. DEQ's NRO is an appropriate venue for the Proceedings.
3. Mr. Archie failed to develop and implement a SWPPP for the Facility, in violation of Permit Part III.
4. Mr. Archie failed to submit to DEQ the Chesapeake Bay TMDL DMR for Outfall 001 at the Facility for the July through December 2016 monitoring period (due January 10, 2017), in violation of Permit Parts I(A)(2)(d)(2), I(A)(5)(a) and I(B)(7)(b)(1)
5. Mr. Archie failed to submit to DEQ benchmark monitoring DMRs for Outfall 001 for the January through June 2017 monitoring period (due July 10, 2017), the July through December 2017 monitoring period (due January 10, 2018), the January through June 2018 monitoring period (due July 10, 2018), and the July through December 2018 monitoring period (due January 10, 2019), in violation of Permit Parts I(A)(1)(b), I(A)(2)(d)(2), I(A)(5)(a).
6. Mr. Archie failed to conduct a data analysis of the Chesapeake Bay TMDL discharge monitoring data, in violation of Permit Part I(B)(7)(b)(3)(b).

### **IV. Relief**

The above findings of fact and conclusions of law support issuance of a Special Order pursuant to Va. Code § 10.1-1186 to compel Mr. Archie to comply with the State Water Control Law and the Permit. Specifically, the Special Order will require that Mr. Archie:

1. Within 90 days of the effective date of the Special Order, submit to DEQ a SWPPP for the Facility, satisfying the requirements of Part III of the Permit.
2. If DEQ provides any comments on the SWPPP, respond to DEQ's comments within 14 days of the date of the comments.
3. Within 30 days of the effective date of the Special Order, submit to DEQ a data analysis of the Chesapeake Bay TMDL data, in accordance with Permit Part I(B)(7)(b)(3)(b), based on nutrient and sediment results from the averaged Chesapeake Bay TMDL monitoring reports.



4. Within 90 days of the effective date of the Special Order, submit to DEQ a Chesapeake Bay TMDL Action Plan, in accordance with Permit Part I(B)(7)(b)(3)(c), if the data analysis required by paragraph 3 above indicates that the calculated Facility loading value of total phosphorus exceeds 1.5 lb/ac/yr, total nitrogen exceeds 12.3 lb/ac/yr, or total suspended solids exceeds 440 lb/ac/yr.
5. Within 30 days of the effective date of the Special Order, pay a civil penalty of \$10,000.